

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
PAUL C. THORNTON)

For Appellant: Paul CThornton,
in pro, per.

For Respondent: Mark McEvilly
Counsel

O P I N I O N

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Paul C. Thornton against a proposed assessment of additional personal income tax and penalties in the total amount of \$280.40 for the year 1978.

Appeal of Paul C. Thornton

At issue is whether appellant **qualified** as a head of household for 1978 and whether his failure to furnish information requested by respondent **was** due to reasonable cause and not willful neglect.

Appellant filed a personal income tax return for 1978 claiming head of household filing **status** based on support which he provided for his daughter. Later, respondent sent him a head of household questionnaire. Appellant returned the questionnaire only **partially** completed but did indicate that his daughter did not live with him the entire year. Respondent requested that appellant file a completed head of household **questionnaire**, but appellant did not respond to that request.

Respondent denied **appellant's** claim to head of household filing status and issued a notice of proposed assessment which included a penalty for failure to furnish information upon demand. Appellant protested, and this appeal followed.

Section 17042 of the Revenue and Taxation Code defines the term "head of household" and provides,, in pertinent part:

[A]n individual shall be considered a head of a household if, and only if, such individual is not married at the close of the taxable year, and . . .

(a) Maintains as his home a household which constitutes for such taxable year the principal place of abode, as a member of such household, of--

(1) A. . . daughter .. . **of** the taxpayer

The latter requirement, i.e., that the individual maintain as his home a household which constitutes for such year the principal abode of a qualifying dependent, has been interpreted to mean that the taxpayer's dependent must occupy such household for the entire year, except for temporary absences. (Appeal of Gwen R. Fondren, Cal. St. Bd. of Equal., May 10, 1977; Appeal of Henry C. H. Hsiung, Cal. St. Bd. of Equal., Dec. 17, 1974.) Since appellant's daughter was not a member of his household for the entire year, he cannot attain head of household status for that year whether or not he provided living support for her throughout that year.

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Section **18683** of the Revenue and Taxation Code provides:

If **any** taxpayer fails or refuses to furnish any information requested in writing by the Franchise Tax Board or fails or refuses to make and file a return required by this part upon notice and demand by the Franchise Tax Board, then, unless the failure is due to reasonable cause and not willful neglect, the Franchise Tax Board may add a penalty of **25** percent of the amount **of tax** determined pursuant to Section 18648 or of any deficiency tax assessed by the Franchise Tax Board concerning the assessment of which the information or return was required.

Appellant takes the position that no penalty should apply **because** he filed his 1978 return in good faith, and respondent was not diligent in questioning the head of household status claimed on the return. We do not believe that the arguments advanced by appellant establish reasonable cause for his failure to furnish the information requested by respondent.

Accordingly, we must sustain respondent's action.

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O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Paul C. Thornton against a proposed assessment of additional personal income tax and penalties in the total amount of \$280.40 for the year 1978, be and the same is hereby sustained.

Done at Sacramento, California, this 28th day of July , 1983, by the State Board of Equalization, with **Board Members** Mr. Bennett, Mr. Collis, Mr. Dronenburg, Mr. Nevins and Mr. Harvey present.

<u>William M. Bennett</u>	, Chairman
<u>Conway H. Collis</u>	, Member
<u>Ernest J. Dronenburg, Jr.</u>	, Member
<u>Richard Nevins</u>	, Member
<u>Walter Harvey*</u>	, Member

*For Kenneth **Cory, per** Government Code section 7.9